Federal Communications Commission

Notice of Inquiry into the effect of foreign mobile termination rates

an **INTUG** submission
January 2005

Before the Federal Communications Commission
Washington, D.C. 20554

In the matter of the effect of foreign mobile termination rates on U.S. customers	IB Docket No. 04-398

Introduction

INTUG[1] welcomes the publication by the Federal Communications Commission (FCC) of its notice of inquiry into the termination rates for calls to foreign mobile networks.[2]

The issue has previously been the subject of public comments as part of the annual proceedings by the United States Trade Representative (USTR) in compliance with Section 1337 of the Omnibus Trade and Competitiveness Act of 1988 and a consultation is presently open at the USTR.[3] (See, for example, press release[4] and report[5] of 7th April 2004.)

INTUG has filed separate comments with the Commission on the question of international mobile roaming charges under IB 04-398.[6]

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[1] http://www.intug.net/
[2] http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-247A1.pdf
[3] http://www.ustr.gov/Trade_Sectors/Manufacturing/Telecom/Section_Index.html
[4] http://www.ustr.gov/Document_Library/Press_Releases/2004/April/USTR_Issues_2004_Review_of_Telecom_Trade_Agreements.html
[5] http://www.ustr.gov/assets/Trade_Sectors/Manufacturing/Telecom/asset_upload_file802_5269.pdf
[6] http://www.intug.net/submissions/FCC_roaming.pdf

INTUG has previously expressed its concerns about the issue of the high cost of terminating international calls on mobile networks at a number of international fora where the US Government has been represented including:

- ITU-T Study Group 3
- APECTEL
- OECD
- CITEL

INTUG has also made representations to the European Commission (EC) and to the European Regulators Group (ERG) on this matter.

These continued and persistent efforts have been necessary because many Mobile Network Operators (MNOs) have been engaged in a "3D" strategy in respect of regulation of termination rates: deny, delay and degrade. In doing so, they have benefited enormously from the continuing high levels of cash flowing from domestic and international calls being terminated on their networks.

The problem is not confined to mobile network operators. A few fixed network operators have added a substantial mark-up to the mobile termination rates in their charges to retail customers, while others have declined to pass on savings from reductions in mobile termination rates.

Average Revenue Per User

During the period of the dot com boom, the mobile network operators were judged by financial markets primarily in terms of the growth in their numbers of subscribers. Those growing faster than rivals were given additional credit. As the financial markets shifted into the dot com crash, the metric moved from growth in subscriber numbers to growth, or at least stability, in Average Revenue Per User (ARPU).

Operators have been obliged to publish ARPU data promptly and to do so for each country in which they were present. The tables show recent ARPU data for the Vodafone Group and Orange (part of the France Telecom Group). The variations reflect differences in prices and in cultural factors, such as the propensity to make calls.

Table 1 *Vodafone annual ARPU to 30 September 2004*[7]

	currency	*pre-paid*	*contract*
United Kingdom	GBP	129	580
Ireland	EUR	366	1,170
Germany	EUR	125	485
Netherlands	EUR	159	870
Greece	EUR	211	768
Italy	EUR	306	924
Portugal	EUR	192	687
Spain	EUR	177	680
Hungary	HUF	41,726	156,752
Sweden	SEK	836	5,749
Malta	MTL	97	920
Australia	AUD	338	944
New Zealand	NZD	349	1,817
Egypt	EGP	794	3,070

Table 2 *Orange annual ARPU to June 2004* [8]

	currency	*all customers*
United Kingdom	GBP	274
France	EUR	167
Belgium	EUR	431
Netherlands	EUR	381
Denmark	EUR	371
Switzerland	EUR	688
Romania	EUR	158
Slovakia	EUR	201
Egypt	EUR	176

One consequence of the intense scrutiny of the ARPU is that any prospective decline in mobile termination rates is seen in terms of causing a corresponding reduction in ARPU and thus would be likely to reduce the price of the operators' stocks, directly affecting shareholders. Therefore, the operators go to considerable lengths to retain revenues from termination rates. Since the financial markets look only one or two quarters into the

[7] http://www.vodafone.com/assets/files/en/VOD_KPIs_20040930.xls
[8] http://www.francetelecom.com/en/financials/investors/data/statements/att00002170/France_Telecom_Management_Report_June_2004.pdf

future the operators can keep going by putting off the inevitable reductions in termination rates.

The delays in finding new revenues, presumably from value-added and location-based services, have forced the operators to greater dependency on termination rates. They have made remarkably little progress in new areas, having reported minimal revenues from data and value-added services, with the exceptions of Japan and South Korea. The great majority of what is reported as "data" really comes from SMS, including premium rate SMS.

Receiving party pays

In the case of a country first deploying a mobile network, the choice of Receiving Party Pays (RPP) would be a means to avoid the problem of abuse of termination market power. However, few countries remain in this pristine state.

Countries with very few mobile customers could switch from Calling Party Pays (CPP) to RPP without too much inconvenience. However, they are generally those most reliant on pre-paid customers. It is difficult to imagine the very poor paying to receive calls. There is also a general understanding that adoption of mobile telephony is slower if a country adopts RPP than it would be under CPP. Many countries are likely to be willing to trade off future problems arising from CPP in return for faster growth.

Stephen Littlechild has argued that it would be possible to switch from RPP to CPP as a means to overcome the problem of high termination rates, but that there is a very real lack of enthusiasm amongst operators and regulators.[9] Where CPP is well established it would be very hard to argue for a switch to RPP. The logistics would require extensive consultation, resolution of difficult regulatory problems, identification of technological solutions and programmes to educate the public, with significant risks of confusion. Additionally, the disruption would raise concerns in the financial markets that some operators might not survive the switchover or might lose market share.

In countries where CPP is the normal method for a mobile network, then an operator could opt for RPP by the simple means of assigning an alternative number range for some or all of its subscribers, then charging them for incoming minutes of traffic. However, the operators do not so, presumably because they do not see sufficient demand.

It seems extremely unlikely that, at least in the short term, countries are going to switch from CPP to RPP as the solution to abuses in termination markets. It is seems equally unlikely that the FCC would manage to persuade countries to make this change, thus there seems little alternative but to encourage foreign authorities to regulate the rates charged for termination on mobile networks.

[9] http://www.econ.cam.ac.uk/dae/repec/cam/pdf/cwpe0426.pdf

European Union

The European Union has been an active champion of GSM at a political level, where it is seen as an example, perhaps the only recent example, of an industrial policy success over the rest of the world. Today there remains a sense that the GSM industry should be, if not supported, certainly protected from attacks.
The mobile network operators have gone to considerable lengths to exercise their political influence. It is important to note that in many cases, governments hold substantial investments in the operators, for example, in Orange (owned by France Telecom), T-Mobile (owned by Deutsche Telekom), Telenor and KPN. Thus some governments have a vested interest in protecting the ARPU of the operators, even if the shares are held by a ministry not responsible for telecommunications policy.

To build on the success of GSM, the mobile industry is to move to 3G. This is clearly an expensive undertaking in terms of network construction and the persuasion of customers to buy new handsets, perhaps with cross-subsidies from the operators. The operators have made very plain that their capacity to build 3G networks and to turn 3G into a success could be damaged, perhaps irreparably, by regulation of termination rates and international mobile roaming rates.

It has also been alleged that it is smaller operators that most depend on termination revenues and that action by an NRA might cause them to be eliminated from the markets. The implication being that the NRA would be blamed for the loss of competition.

In December 2001 the European Union reached agreement on a package of telecommunications directives that was to take effect in July 2003. The EC subsequently specified, in a Recommendation on relevant markets (C(2003)497), a number of markets that had to be assessed for their competitiveness, including termination of voice calls on fixed networks and, separately, termination on mobile networks.[10] This process has been very badly delayed, with member states, at the political level, procrastinating on transposition of the directives and, on the regulatory level, struggling with implementation.

The regulators through both the European Regulators Group (ERG) and the Independent Regulators Group (IRG) have been working on the issue of mobile termination rates. The IRG has adopted a PIB (Principles of Implementation and Best practice) on the application of remedies in the mobile voice call termination market.[11] There was also extensive discussion of mobile termination in the public consultation that led to the common position on regulatory remedies.[12] The IRG has published "snapshots" of mobile termination rates for December 2003[13] and July 2004[14] (see Table 3 below). The Italian regulator, AGCOM, organised a workshop on Fixed and mobile telecommunication

[10] http://europa.eu.int/information_society/topics/telecoms/regulatory/publiconsult/documents/relevant_markets/l_11420030508en00450049.pdf
[11] http://irgis.icp.pt/admin/attachs/384.pdf
[12] http://erg.eu.int/doc/whatsnew/erg_0330rev1_remedies_common_position.pdf
[13] http://irgis.icp.pt/admin/attachs/385.pdf
[14] http://irgis.anacom.pt/admin/attachs/388.pdf

market system.[15] It would be hard to claim that the issue had not been addressed, even if the outcomes have been slower than might be hoped.

In the vanguard of regulation of mobile termination rates has been the United Kingdom which has had to engage in protracted processes as the regulators struggled to gain the upper hand. It has entailed actions by the Office of Telecommunications (OFTEL) and the Office of Communications (OFCOM), with appeals to the Monopolies and Mergers Commission (MMC) and the Competition Commission, plus judicial review of those decisions. The conclusion of which are that the single operator market definition is valid, that the price reductions are justified, but that the operators are willing to take any legal measure in order to put off day when there is effective regulation of the markets.

The French regulator, l'Authorité de régulation des télécommunications (ART), published in December 2004 its determination on the prices for termination on mobile networks.[16] It required annual reductions of 17%, 24% and third, but as yet unspecified, reduction. In 2005 it estimates a saving for consumers of €250 millions. Following complaints about the exorbitant prices for Short Message Service (SMS) the ART announced an investigation into the SMS market, both retail and interconnection.[17] If this finds the SMS termination market to be uncompetitive, as we would expect, it is very likely that other NRAs will follow their example.

The issue of higher termination rates has also arisen for fixed networks, with some smaller operators raising their rates. The German NRA has ruled on the rates for city carriers.[18]

In November 2004 the European Commission published the Tenth Implementation Report (COM(2004) 759 final) in which it urged regulators to complete analyses of the markets for call termination on individual mobile networks and wholesale international roaming "as quickly as possible".[19] It noted:

> In response to regulatory intervention there has been a welcome downward trend in these rates over the last year. The average fixed-to-mobile termination rate for SMP operators in the EU 15 fell by 14% between July 2003 and July 2004.

The European Commission sets out in considerable detail in that report the prices charged and the action of regulators in seeking to reduce the prices paid for termination on mobile networks.

In a report on trade barriers in the USA, the European Commission comments on the actions of the FCC in respect of benchmarking international termination rates, questioning whether this would be in breach of WTO rules.[20]

[15] http://www.agcom.it/eventi/marzo2004/index.htm
[16] http://www.art-telecom.fr/communiques/communiques/2004/index-c101204-2.htm
[17] http://www.art-telecom.fr/communiques/communiques/2004/index-c290704.htm
[18] http://www.regtp.de/en/aktuelles/pm/03081/index.html
[19] http://europa.eu.int/information_society/topics/ecomm/all_about/implementation_enforcement/annualreports/10threport/index_en.htm
[20] http://trade-info.cec.eu.int/doclib/html/120829.htm

Australasia

The Australian Competition and Consumer Commission (ACCC) is completing the process to end regulation of the wholesale mobile originating access service. At the same time it is enforcing rate regulation on the termination of calls on mobile networks as part of its mobile services review.[21] In May 2004 it launched a consultation on a Draft Report[22] on the mobile termination service which it confirmed in a Final Report[23] in June 2004. However, implementation of that decision has been delayed by legal action and petitions brought by Vodafone. It has been complicated by fixed operators stating their refusal to pass on price reductions to customers.

The New Zealand Commerce Commission has a similar investigation into mobile termination rates[24] with a draft determination[25] issued on 18 October 2004 (final responses were due on 23 December). Much of the material presented and argued in Wellington had previously been presented to the Australian, British and other regulatory authorities in their investigations. In some ways, New Zealand suffered in coming late to the issue, since it allowed material that was already available to be re-packaged for consideration there. The result being a disproportionate level of filing for a market of 4.5 million people and the prospect of protracted litigation when the Commerce Commission reaches its final decision.

Termination rates

In the INTUG contribution to Study Group 3 of the ITU in June 2002 data were presented on termination rates. These data has been reproduced by the FCC in its NOI.[26]

The Independent Regulators Group (IRG) has published data on mobile termination rates in Europe in 2004 (see tables 3 and 4). The prices range from five to twenty-two cents per minute, depending on the time and the country.

[21] http://www.accc.gov.au/content/index.phtml/itemId/333898
[22] http://www.accc.gov.au/content/index.phtml/itemId/491986
[23] http://www.accc.gov.au/content/index.phtml/itemId/520596
[24] http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobileTerminationRates/reportsandsubmissions.aspx
[25] http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobileTerminationRates/ContentFiles/Documents/Mobile Termination Draft Report - FINAL PUBLIC 18 Oct 2004 (3).zip
[26] http://www.intug.net/submissions/ITU-T-SG3_intl_termination_revised.html

Table 3 *Snapshot of mobile termination rates in January 2004*[27] *and July 2004*[28]

	30 January 2004		1 July 2004	
Country	peak	off-peak	peak	off-peak
Norway	0,0893	0,0893	0,0929	0,0929
Cyprus	0,0928	0,0928	-	-
Lithuania	0,1381	0,0705	0,1043	0,0521
Czech Republic	0,1106	0,1106	0,1014	0,1014
Ireland	0,1333	0,0999	0,1338	0,0999
Sweden	0,1231	0,1060	0,1125	0,1125
Iceland	0,1240	0,1149	0,1240	0,1149
Denmark	0,1581	0,0810	0,1494	0,0833
United Kingdom	0,1736	0,0678	0,1340	0,1340
Slovak Republic	0,1282	0,1083	0,1205	0,1205
Poland	0,1560	0,0955	0,1560	0,0955
Latvia	0,1278	0,1278	0,1278	0,1278
Austria	0,1282	0,1282	0,1286	0,1286
Finland	0,1290	0,1290	0,0962	0,0962
Spain	0,1667	0,0906	0,1549	0,1027
Hungary	0,1626	0,0906	0,1718	0,0993
Luxembourg	0,1500	0,1300	0,1500	0,1300
Belgium	0,1637	0,1146	0,1647	0,1192
Germany	0,1505	0,1505	0,1508	0,1508
France	0,1603	0,1334	0,1604	0,1354
Slovenia	0,2100	0,1000	0,2100	0,1000
Italy	0,1756	0,1374	0,1756	0,1374
Netherlands	0,1622	0,1622	0,1622	0,1622
Malta	0,1762	0,1762	0,1784	0,1784
Greece	0,1800	0,1800	0,1744	0,1744
Estonia	0,1857	0,1857	0,1855	0,1855
Portugal	0,2364	0,1748	0,2080	0,1990
Switzerland	0,2221	0,2221	0,2241	0,2241

[27] http://irgis.anacom.pt/admin/attachs/385.pdf
[28] http://irgis.anacom.pt/admin/attachs/388.pdf

Table 4 *Fixed-to-mobile national average interconnection charges*[29]

member state	2002	2003	2004
EU average	18.92	17.58	14.76
Belgium	19.3	17.9	16.32
Denmark	16.1	15.6	15.51
Germany	15.1	15.1	15.08
Greece	21.0	19.1	17.52
Spain	21.6	18.1	15.80
France	18.9	15.5	15.76
Ireland	14.8	13.8	11.70
Italy	20.2	17.5	17.57
Luxembourg	13.4	13.4	15.00
Netherlands	20.8	21.9	16.30
Austria	13.0	12.9	12.84
Portugal	--	26.8	21.28
Finland	12.9	12.9	9.32
Sweden	15.9	15.5	11.27
United Kingdom	20.9	20.9	9.06

The OECD published data in Communications Outlook 2003 and will do so again in *Communications Outlook 2005*.[30]

VoIP

In the medium term we consider Voice over Internet Protocol (VoIP) is likely to act as a check on the prices of mobile termination.

This will arise in part from very low prices and from "free" calls, but also from bundling. There are already some bundled offers ADSL plus all national calls to fixed numbers, other bundles include television channels. For example, in France the Free.fr offer of 15 Mbit/s for €29.99 per month includes all national calls to fixed numbers, while charging €0.03 per minute to call the USA and €0.19 to call a mobile network in France.[31] This has the effect of highlighting calls to mobile networks as additional items on monthly communications bills and creating an incentive to originate and terminate calls on the fixed networks.

[29] From figure 33 in SEC (2004) 153 volume 2
http://europa.eu.int/information_society/topics/ecomm/doc/all_about/implementation_enforcement/annualreports/10threport/sec20041535VOL2en.pdf
[30] http://www.oecd.org/document/32/0,2340,en_2649_34225_2514080_1_1_1_1,00.html
[31] http://adsl.free.fr/tel/telephonie.html

However, we do not anticipate any prices changes by the mobile operators because if this in the next three years.

3G

In theory, the bulk of the revenues with 3G will come from services other than voice. It seems unlikely that the issue of termination monopolies will be a problem for such services. However, it may point to other problems, related to access to 3G networks and international mobile roaming charges.

There seems to be general agreement that the cost of termination of a voice call on a 3G network is a fraction of the cost on 2G, perhaps one eighth or one tenth. Thus we should expect to see a sharp decline in the target price for regulators as voice traffic moves to 3G networks.

Conclusions

MNOs are under strong pressure from financial markets to maintain and to increase their ARPUs. In the continuing absence of new revenues, except in Japan and the Republic of Korea, they have little alternative but to sustain present business practices, notably to rely on the revenues from the termination of calls, including those originating in the USA.

The mobile network operators have shown a willingness to lobby up to the highest level and to litigate to the maximum extent possible; to speak before any politician, regulator or judge that will give them time. Delay purchased in this way, literally pays dividends to shareholders.

The FCC faces the problem of engagement with foreign governments and regulators already under considerable pressure from MNOs not to intervene or to do so only very slowly. Support from the FCC for more determined interventions may, if judiciously applied, help those governments and NRAs. A determination on the substance of the argument, on the market definition, on the methodological issues might be very valuable, especially since some of the expert opinion used abroad to justify high termination fees comes from the USA.

INTUG

INTUG, the International Telecommunications Users Group (INTUG), is an association of national telecommunications users associations. INTUG was founded in 1974 to act as a single voice for users of telecommunications.

The mission of INTUG is to ensure that users have access to affordable, interoperable telecommunications services and that their voice is heard wherever telecommunications policy is decided. For almost thirty years INTUG has argued for the introduction of competition in telecommunications and that all users must have access to the benefits of such competition.

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